Supreme Court, U.S.
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No. _____

IN THE
# Supreme Court of the United States

VALLEY VIEW PARTNERS,
*Petitioner*,

v.

NORTHAMPTON COUNTY TAX CLAIM BUREAU
AND ANTHONY MALINOWSKI,
*Respondents*.

**On Petition for a Writ of Certiorari to the Commonwealth Court of Pennsylvania**

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTION PRESENTED

Whether a property owner's right to redeem his property from a tax sale by paying delinquent taxes in installments is a property interest protected by the Due Process Clause of which the owner may not be deprived without meaningful notice.

## PARTIES TO THE PROCEEDINGS

Valley View Partners, Little Creek Associates, Dr. Neresh Nagpal, and Dr. Beena Nagpal were petitioners and appellants in the state court proceedings.

Northampton County Tax Claim Bureau and Anthony Malinowski were respondents and appellees in the state court proceedings.

## TABLE OF CONTENTS

Page

QUESTION PRESENTED ..... i

PARTIES TO THE PROCEEDINGS ..... ii

TABLE OF AUTHORITIES ..... v

INTRODUCTION ..... 1

OPINIONS BELOW ..... 2

JURISDICTION ..... 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED ..... 2

STATEMENT OF THE CASE ..... 3

A. Statutory Background ..... 3

B. Factual Background ..... 5

C. Procedural Background ..... 10

REASONS FOR GRANTING THE PETITION ..... 12

I. THE DECISION BELOW CONFLICTS WITH THIS COURT'S PRECEDENTS ..... 12

II. THE DECISION BELOW CONFLICTS WITH DECISIONS OF SEVERAL STATE SUPREME COURTS ..... 15

A. New York Court of Appeals – *McCann* ..... 16

B. New Jersey Supreme Court – *Township of Montville* ..... 17

C. Georgia Supreme Court – *Funderburke* ..... 18

D. Montana Supreme Court – *Tax Lien Services* ..... 19

E. Alaska Supreme Court – *Wallace* ..... 20

III. THE QUESTION PRESENTED IS OF GREAT PRACTICAL IMPORTANCE ..... 22

CONCLUSION ..... 23

APPENDIX

## TABLE OF AUTHORITIES

Page

CASES

*Appeal of Quality Home Improvement Co.*, 458 A.2d 1074 (Pa. Commw. Ct. 1983) ..... 4

*Bell v. Burson*, 402 U.S. 535 (1971) ..... 12

*Board of Regents v. Roth*, 408 U.S. 564 (1972) ..... 12, 18

*Darden v. Montgomery County Tax Claim Bureau*, 629 A.2d 321 (Pa. Commw. Ct. 1993) ..... 5, 14

*Funderburke v. Kellet*, 364 S.E.2d 845 (Ga. 1988) ..... 18, 19, 22

*Goldberg v. Kelly*, 397 U.S. 254 (1970) ..... 12

*Goldsmith v. United States Bd. of Tax Appeals*, 270 U.S. 117 (1926) ..... 12

*Jones v. Flowers*, 126 S. Ct. 1708 (2006) ..... 15

*Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982) ..... 13

*Lowery v. Garfield County*, 208 P.2d 478 (Mont. 1949) ..... 20

*Mathews v. Eldridge*, 424 U.S. 319 (1976) ..... 13, 15

*McCann v. Scaduto*, 519 N.E.2d 309 (N.Y. 1987) ..... 16, 17, 22

*Mennonite Bd. of Missions v. Adams*, 462 U.S. 791 (1983) ..... 12, 15

*Morrissey v. Brewer*, 408 U.S. 471 (1972) ..... 12, 13

*Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950) ..... 15

*Municipality of Anchorage v. Wallace*, 597 P.2d 148 (Alaska 1979) ..... 20, 21, 22

*Tax Lien Servs. v. Hall*, 919 P.2d 396 (Mont. 1996) ..... 19, 20, 22

*Township of Montville v. Block 69, Lot 10*, 376 A.2d 909 (N.J. 1977) ..... 17, 18, 22

*Upset Sale of Properties Against Which Delinquent 1981 Taxes Were Returned to Tax Claim Unit on or About the First Monday of May, 1982, In re*, 559 A 2d 600 (Pa. Commw. Ct. 1989) ..... 5, 14

*York v. Roach*, 639 A.2d 1291 (Pa. Commw. Ct. 1994) ..... 5, 14

CONSTITUTION AND STATUTES

U.S. Const. amend. XIV (Due Process Clause) ..... 2, 12, 15, 18

28 U.S.C. § 1257 ..... 2

Pennsylvania Real Estate Tax Sale Law, 72 Pa. Stat. Ann. §§ 5860.101-5860.803 (2005) ..... 3

Art. II:

§ 5860.201 ..... 3

§ 5860.205 ..... 3

§ 5860.208 ..... 3

Art. III:

§ 5860.308 ..... 3

Art. VI(a) ..... 3

§§ 5860.601-5860.609 ..... 3

§ 5860.601(a) ..... 3

§ 5860.602(a)-(e)(1) ..... 3

§ 5860.602(e)(3) ..... 3

§ 5860.602(g)-(h) ..... 3

§ 5860.603 ..... 3, 4, 9

§ 5860.607(a.1)(1) ..... 4

§ 5860.607(g) ..... 4

OTHER MATERIALS

Frank S. Alexander, *Tax Liens, Tax Sales, and Due Process*, 75 Ind. L.J. 747 (2000) ..... 4, 16, 22, 23

Ellen F. Friedman, *The Constitutionality of Request Notice Provisions in In Rem Tax Foreclosures*, 56 Fordham L. Rev. 1209 (1988) ..... 22, 23

*Procedure for Collecting Delinquent Taxes*, Tax Claim Bureau, Columbia County, Pennsylvania, *at* http://www.columbiapa.org/tax_claim/index.html ..... 4

Petitioner Valley View Partners respectfully petitions for a writ of certiorari to review the judgment of the Commonwealth Court of Pennsylvania.

## INTRODUCTION

This case presents a constitutional issue of great significance to property owners across the nation: when a state confers a right of redemption on individuals whose property is subject to tax sale, may it strip individuals of that right without first providing notice? The state courts are deeply divided on that question, which affects thousands of taxpaying property owners every year.

Petitioner Valley View Partners ("Valley View") was deprived of property worth approximately $1 million for failure to pay outstanding taxes of less than $1,000. Under Pennsylvania law, Valley View could have prevented its property from being sold by paying only 25% of the total taxes due and then entering into an installment plan agreement to pay the remainder. The managing partner of Valley View, Dr. Ranjan Sachdev ("Dr. Sachdev"), was not informed of that option, even though he personally appeared at the tax claim bureau and tendered well over 25% of the total taxes due. Indeed, Dr. Sachdev was misinformed that he had paid the full amount of the outstanding taxes on the $1-million property and that he had left only a different property of far lesser value exposed to tax sale.

The lower courts nevertheless concluded that the tax claim bureau had no duty to notify Dr. Sachdev of his ability to redeem his property under state law. That conclusion flies in the face of this Court's due process precedents, as well as the holdings of other state supreme courts. The highest courts of New York, New Jersey, Georgia, Montana, and Alaska have recognized that a right of redemption under state law is a protected property interest and that, even if a state has previously notified an owner that his taxes are delinquent and his property is subject to sale, the state must provide separate and

meaningful notice when the owner's right of redemption is about to be permanently foreclosed.

Nevertheless, as commentators have recognized, widespread confusion currently exists among the states regarding which steps in the tax foreclosure process demand constitutionally sufficient notice. The Court should grant certiorari to establish that the Due Process Clause protects the right to redeem property from a tax sale, and to clarify the type of notice a state must give before depriving an owner of that right.

## OPINIONS BELOW

The opinion and order of the Commonwealth Court of Pennsylvania (Pet. App. 2a-9a) is unreported. The opinion and order of the Court of Common Pleas of Pennsylvania (*id.* at 10a-17a) is unreported.

## JURISDICTION

The judgment of the Commonwealth Court of Pennsylvania was entered on July 20, 2005. The Pennsylvania Supreme Court denied a petition for allowance of appeal on May 3, 2006. *See* Pet. App. 1a. On July 24, 2006, Justice Souter granted an extension of time within which to file a petition for a writ of certiorari, to and including August 31, 2006. *See id.* at 38a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides in relevant part:

> No State shall . . . deprive any person of . . . property, without due process of law[.]

Relevant provisions of Pennsylvania's Real Estate Tax Sale Law are set forth at Pet. App. 18a-37a.

## STATEMENT OF THE CASE

### A. Statutory Background

The Pennsylvania Real Estate Tax Sale Law, 72 Pa. Stat. Ann. §§ 5860.101-5860.803 (2005), governs delinquent tax collection in Pennsylvania counties and boroughs. Article VI(a) of the law (codified at 72 Pa. Stat. Ann. §§ 5860.601 to 5860.609) specifically concerns tax upset sales.

In accordance with the law, each county maintains a tax claim bureau that acts as an agent for the county's tax authorities, receiving claims for unpaid taxes and pursuing them on behalf of the authorities. *See id.* §§ 5860.201, 5860.205, 5860.208. The timely (*i.e.*, before the annual April 1 deadline) receipt of a claim triggers the bureau's duty to notify the property owner of the delinquent taxes. The bureau must provide that notice by certified mail before July 31 of the year following the delinquency. *See id.* § 5860.308. If the notice is satisfactory, but the taxes remain unpaid, the bureau may schedule an upset tax sale. In accordance with the statute, upset sales are held only during a two-week period: between the second Monday of September and the first day of October. *See id.* § 5860.601(a). The bureau must notify the owner of the sale at least 30 days beforehand using the following two methods: (1) certified mail; and (2) placing notice in one legal publication and two newspapers of general circulation. *See id.* § 5860.602(a)-(e)(1). Additionally, at least 10 days before the sale, the bureau must post notice on the property. *See id.* § 5860.602(e)(3). All notices must contain specific language, set forth in § 5860.602, alerting the property owner to the sale. *See id.* § 5860.602(g)-(h).

Pursuant to § 5860.603 of the law, an owner may remove his property from a tax sale by "enter[ing] into an agreement, in writing, with the bureau to stay the sale of the property upon the payment of twenty-five per centum (25%) of the amount due on all tax claims and tax judgments filed or entered against such property and the interest and costs on the taxes returned to date." *Id.*

§ 5860.603. Once the owner submits payment for at least 25% of the taxes due, and the owner and the tax claim bureau enter into an installment plan agreement, the owner has a maximum of one year to satisfy the delinquent taxes in three subsequent installments. *See id.*

Notably, Pennsylvania's tax sale law offers no post-sale redemption period to a property owner with respect to any land other than that on which he resides. Thus, the owner's last chance to redeem a parcel of *unoccupied* property is the business day before the scheduled sale, when he can either pay the delinquent taxes in full or enter into an installment agreement with the bureau. *See id.* § 5860.607(g); *Procedure for Collecting Delinquent Taxes*, Tax Claim Bureau, Columbia County, Pennsylvania, *at* http://www.columbiapa.org/tax_claim/index.html. Pennsylvania's procedures contrast with those of most other states, which offer at least some post-sale opportunity to redeem property following its exposure to tax sale. *See* Frank S. Alexander, *Tax Liens, Tax Sales, and Due Process*, 75 Ind. L.J. 747, 774-75 & n.148 (2000). Once a sale of owner-unoccupied property is completed in Pennsylvania, the owner's only recourse is to contest the sale by filing objections in court within 30 days after the court confirms the bureau's consolidated return. *See* 72 Pa. Stat. Ann. § 5860.607(a.1)(1).

The Pennsylvania Commonwealth Court has addressed the installment payment plan in decisions concerning a number of petitions to upset tax sales. In all but one of these decisions,[1] the court has found that, when a property owner submits payment equaling at least 25% of the total due, the tax claim bureau has an affirmative duty to notify the owner that he or she can stay the tax sale, and

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[1] In the single outlying case where the court found no affirmative duty, the tax claim bureau did *not* retain the partial payment made by the property owner, but instead returned it to him with a statement of the total amount due. *See Appeal of Quality Home Improvement Co.*, 458 A.2d 1074, 1076 (Pa. Commw. Ct. 1983). In this case and in the Pennsylvania decisions recognizing an affirmative duty, the bureau accepted and cashed the partial payments.

redeem the property, by entering into an installment plan. *See, e.g., In re Upset Sale of Properties Against Which Delinquent 1981 Taxes Were Returned to Tax Claim Unit on or About the First Monday of May, 1982*, 559 A.2d 600, 601 (Pa. Commw. Ct. 1989) ("[T]he Tax Unit had an affirmative duty to advise [the property owner] of his opportunity to make installment payments on the balance, before the Tax Unit proceeded to deprive him of his property."); *York v. Roach*, 639 A.2d 1291, 1292-93 (Pa. Commw. Ct. 1994) (holding that, because the tax claim bureau accepted a payment submitted by the owner that met the 25% requirement, it "had an affirmative duty to inform [the property owner] of the option to enter into an installment agreement"); *Darden v. Montgomery County Tax Claim Bureau*, 629 A.2d 321, 323-24 (Pa. Commw. Ct. 1993) (agreeing with the *In re Upset Sale of Properties* court in noting that, when the bureau accepted payment amounting to more than 25% of the total due, it had an affirmative duty to inquire if the property owner wished to stay the sale through installment payments).

**B. Factual Background**

Petitioner Valley View Partners is a Pennsylvania general partnership with three members: Dr. Neresh Nagpal, Dr. Beena Nagpal, and Little Creek Associates, which is a Pennsylvania general partnership between Dr. Sachdev and his wife, Anuradha Sachdev. Pursuant to an agreement with the other members, Dr. Sachdev, an orthopedic surgeon who practices in Bethlehem, Pennsylvania, serves as managing partner of Valley View. *See* Hearing Tr. 56, 59-60 (Record 102a, 105a-106a).[2]

In 1993, Valley View acquired a 52-acre parcel of property on Township Line Road in Lower Nazareth Township, Northampton County, Pennsylvania (Parcel ID num-

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[2] References to "Hearing Tr." are to the transcript of the June 15, 2004 hearing in the trial court, and references to "Record" are to the Reproduced Record filed with the Commonwealth Court on March 14, 2005.

ber L 6-17-5C). Valley View paid $750,000 for the property in 1993 and, as of June 2004, its market value was approximately $1 million. The property has no mortgages or other encumbrances. *See id.* at 75-77 (Record 121a-123a).

In addition to his interest in the Township Line Road property, Dr. Sachdev has an ownership interest in three other Pennsylvania properties: Parcel M 7-1-12 E ("Santee Mill Road"), Parcel N 6 NW 2-10-1 ("Wedgewood Road"), and Parcel L 6-11-23 ("Little Creek Drive"). Dr. Sachdev and his wife jointly hold title to the Santee Mill Road and Wedgewood Road properties. *See* Pet. App. 11a (¶ 3). The Little Creek Associates partnership holds title to the Little Creek Drive parcel. *See id.* (¶ 5).

From 1993 until 1998, Valley View paid real estate taxes for the Township Line Road property in a timely manner. *See* Hearing Tr. 56 (Record 102a). In 2000, Dr. Sachdev received a certified notice from the Northampton County Tax Claim Bureau ("the Bureau") that the taxes on the Township Line Road property had not been paid for 1998 and 1999. *See id.* at 56-57 (Record 102a-103a). The notice stated that the property was subject to tax sale, and it listed the amount of outstanding taxes due. In response to the notice, Dr. Sachdev personally appeared at the Bureau to pay the delinquent taxes. The Bureau accepted Dr. Sachdev's payment, and the Township Line Road property was removed from the tax sale. *See id.* This was the first and only time prior to 2003 that any of the properties under Dr. Sachdev's ownership had been exposed to tax sale. *See id.* at 57 (Record 103a).

In May 2002, the Bureau sent a Notice of Return and Claim to Valley View by certified mail. *See* Pls.' Exh. 8A (Record 150a). Dr. Sachdev's wife signed for the mail, which notified Valley View that its real estate taxes for 2001 were delinquent. The notice contained a bolded, capitalized line that stated, "Total Amount Due Thru May, 2002," with an arrow pointing to the amount due. The notice did not contain a tax sale date. *See id.* No tes-

timony has been offered that Dr. Sachdev received either this notice or a similarly styled reminder notice that was mailed in December 2002; however, the issue of initial notice is not contested in this petition.

In July 2003, with the taxes for 2001 still unpaid, Dr. Sachdev received by certified mail four Notices of Public Tax Sale from the Bureau. *See* Hearing Tr. 57-58 (Record 103a-104a); Pls.' Exhs. 2-5 (Record 143a, 144a, 146a, 147a). These notices stated that the 2001 taxes for four properties – Santee Mill Road, Wedgewood Road, Little Creek Drive, and Township Line Road – were outstanding and that the parcels were susceptible to a tax sale scheduled for September 15, 2003. The notices also contained a sentence regarding the possibility of entering into an agreement to pay the outstanding taxes in installments. This sentence neither mentioned the 25% payment requirement nor provided any information regarding the manner in which an owner could pursue such an agreement with the Bureau.

As he had done in 2000 with the Township Line Road parcel, Dr. Sachdev set out to pay the delinquent taxes. However, unlike the earlier notices received, the 2003 notices nowhere identified the total amount due. On the morning of August 21, 2003, Dr. Sachdev contacted the Bureau by telephone to inquire about the amount due on each of the four properties. *See* Hearing Tr. 58 (Record 104a). During that conversation, Dr. Sachdev recorded two amounts due that were given to him by the clerk – one for the two personal properties, Santee Mill Road and Wedgewood Road, and another for the two partnership properties, Township Line Road and Little Creek Drive. *See id.* at 60 (Record 106a). He then proceeded to the bank to withdraw the necessary funds from his personal accounts, as he had done for the Township Line Road property in 2000. The bank provided him with two checks, one for each amount, and he proceeded to the Bureau intending to remit the checks to cover the delinquent

taxes and to remove all four properties from the sale. *See id.* at 61, 63-64 (Record 107a, 109a-110a).

When Dr. Sachdev arrived at the Bureau, he presented the clerk with the notices for the four properties, along with two checks written for the amounts given him over the phone. *See id.* at 64-65 (Record 110a-111a). Together, these two checks totalled $20,479.66, which was 95.5% of the total tax due ($21,447.95). *See* Pet. App. 3a n.2. The clerk, upon checking her computer, advised Dr. Sachdev that the first check was sufficient to pay off the Santee Mill Road and Wedgewood Road properties, but that the second check did not cover the total amount due on the other two properties, Township Line Road and Little Creek Drive. *See* Hearing Tr. 64-65 (Record 110a-111a).

The clerk did *not* inform Dr. Sachdev that he could apportion the second check between the two remaining properties, enter into an installment agreement to pay the remainder on each, and thus avoid tax sale for both. *See id.* at 66-67 (Record 112a-113a). Without being told that he could preserve his properties from sale by paying an amount less than the total due, Dr. Sachdev believed that he could preserve only one property. He thus decided to pay the taxes on the parcel that was both larger and much more valuable – Township Line Road. *See id.* at 64-65, 69-70 (Record 110a-111a, 115a-116a). At 52 acres, Township Line Road is more than 10 times larger than the 4½-acre Little Creek Drive, and it was worth $1 million, without encumbrances, compared to Little Creek Drive's value of $175,000, with a $120,000 mortgage. *See id.* at 69-70, 74-75 (Record 115a-116a, 120a-121a).

The Bureau clerk accepted Dr. Sachdev's checks and retained them for cashing. At no time did she inform Dr. Sachdev of the installment plan, despite the fact that it was clearly most rational for Dr. Sachdev to apply his checks to satisfy the 25% payment requirement for each of the four properties, rather than to pay the taxes on only three of the properties in full. *See id.* at 66-67 (Record 112a-113a).

The Bureau's failure to notify Dr. Sachdev of the installment plan resulted in the foreclosure of Dr. Sachdev's right of redemption with respect to one of his properties. While § 5860.603 states that installment plans are entered into "at the option of the bureau," that option is exercised when the tax claim bureau reaches an agreement with a delinquent taxpayer. The bureau does not have the option of declining to inform a taxpayer that the installment payment program exists. *See* 72 Pa. Stat. Ann. § 5860.603. Upon arriving at the Bureau with more than three times the 25% minimum payment on August 21, 2003, Dr. Sachdev became eligible for the installment plan program of § 5860.603. No employee of the Bureau, however, notified him of the program.

Unaware of the possibility of entering into a payment plan, but having paid the total taxes due on three of the four properties, Dr. Sachdev departed the Bureau on August 21, 2003, for the airport. There, he boarded a plane to attend to his wife, who had undergone major surgery at the Mayo Clinic and was experiencing complications. *See* Hearing Tr. 72 (Record 118a). At the same time, Dr. Sachdev was arranging care in India for his mother, who had serious health problems, and dealing with the departure of a partner in his orthopedic practice. *See id.* at 73 (Record 119a). For these reasons, two weeks passed before Dr. Sachdev was able to place a follow-up call to the Bureau regarding the Little Creek Drive property.

On Monday, September 15, 2003, with, he believed, the taxes on that property still outstanding, Dr. Sachdev called the Bureau to inquire whether the property had been sold. *See id.* at 73-74 (Record 119a-120a). During that phone call, a clerk told Dr. Sachdev that Little Creek Drive had not been subjected to sale, but that the Township Line Road property had been sold that morning. *See id.* The Bureau employee with whom he spoke recalled that Dr. Sachdev's reaction was one of disbelief. *See id.* at 53 (Record 99a). Dr. Sachdev thought that he had paid the delinquent taxes on the 52-acre Township Line Road

parcel to preserve it from sale and that he possessed receipts reflecting that payment. *See id.* at 73-74 (Record 119a-120a). Dr. Sachdev attempted to explain these facts to the clerk. *See id.* However, when he examined his receipts, Dr. Sachdev discovered that the payment intended for the Township Line Road property had instead been applied to the Little Creek Drive property, and that the clerk had stapled the receipt for the payment to the Township Line Road notice in error. *See id.* at 74 (Record 120a). As such, Little Creek Drive had been preserved from sale, but Township Line Road had been exposed. Indeed, the latter parcel, valued at $1 million, had been purchased at the tax sale that morning for $15,000. *See id.* at 76-77 (Record 122a-123a); Pet. App. 3a-4a.

**C. Procedural Background**

Upon learning that the Township Line Road property had been sold despite Dr. Sachdev's efforts to pay the delinquent taxes on it and the other properties, Valley View sought relief by filing a petition to set aside the sale in the Court of Common Pleas of Northampton County, Pennsylvania, on October 9, 2003. Valley View claimed that the clerk's error in misapplying the funds intended for Township Line Road to Little Creek Drive caused the wrong property to be offered at the tax sale and that the Bureau's failure to notify Dr. Sachdev of an available installment plan program violated Valley View's procedural due process rights.

All parties appeared before the court on June 15, 2004, for a hearing, during which Dr. Sachdev and two employees of the Bureau offered sworn testimony. Dr. Sachdev testified that he appeared at the Bureau on August 21, 2003, with two checks written in amounts that the Bureau had told him were sufficient to pay the delinquent taxes on all four properties. However, when the clerk told him that one of the checks was insufficient to cover both of the partnership properties, and neglected to tell him that he could save all four of the parcels from sale by entering into an installment agreement, *using the funds he*

*had with him that day*, Dr. Sachdev believed that he could save only one of the two partnership properties from sale. Dr. Sachdev testified that he therefore instructed the clerk to apply the money to the larger and more valuable parcel, Township Line Road. *See supra* pp. 7-8.

On December 3, 2004, approximately six months after the hearing, the court entered an order dismissing Valley View's objections to the September 15, 2003 tax sale. Although it is undisputed that Dr. Sachdev had remitted payment far exceeding the 25% minimum when he visited the Bureau on August 21, 2003, the trial court held that the Bureau did not have an affirmative duty to inform him that he could apportion that money among all four properties and enter into an installment agreement that would preserve all of the properties from tax sale. *See* Pet. App. 12a-13a. The trial court further concluded that it was sufficient that the written notices mailed to Dr. Sachdev contained a one-sentence provision generally mentioning the availability of an installment plan. *See id.* at 15a.

Valley View appealed the trial court's decision to the Commonwealth Court of Pennsylvania on December 15, 2004. On July 20, 2005, the Commonwealth Court denied the petition and dismissed Valley View's claims regarding the sale. In upholding the decision of the trial court, the Commonwealth Court affirmed the finding that the Bureau had no affirmative duty to notify Dr. Sachdev of the installment plan, even though he paid more than three times the amount necessary to qualify for it, and even though he testified that his intention in proffering those funds was to pay the taxes due on all four properties. *See id.* at 6a-7a.

Additionally, the Commonwealth Court found that, as a matter of law, the Bureau was not responsible for Dr. Sachdev's belief that he had paid the taxes due on Township Line Road, rather than on Little Creek Drive, despite unrefuted testimony that a clerk erred in stapling the receipt to the wrong notice and in failing to follow Dr.

Sachdev's instructions regarding the apportionment of the payment. *See id.* at 7a-8a.

After the Commonwealth Court affirmed the trial court's decision, Valley View moved for reargument. The court denied reargument on September 13, 2005, and Valley View then submitted a petition for allowance of appeal to the Supreme Court of Pennsylvania. That court denied review on May 3, 2006. *See id.* at 1a.

## REASONS FOR GRANTING THE PETITION

### I. THE DECISION BELOW CONFLICTS WITH THIS COURT'S PRECEDENTS

In analyzing whether a deprivation of property violates the Due Process Clause, this Court first determines whether a genuine property interest is at stake. *See Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). The right of redemption at issue in this case is an individual's right, under Pennsylvania law, to retain ownership of property that has been exposed to a tax sale by paying a proportion of the delinquent taxes. That interest is separate from the original ownership interest in the property and, under this Court's precedents, is separately entitled to due process protection.

This Court has repeatedly held that property interests encompass a range of interests "well beyond" pure ownership of real estate or chattels. *Board of Regents v. Roth*, 408 U.S. 564, 571-72 (1972); *see also Bell v. Burson*, 402 U.S. 535 (1971) (driver's licenses); *Goldberg v. Kelly*, 397 U.S. 254 (1970) (welfare benefits); *Goldsmith v. United States Bd. of Tax Appeals*, 270 U.S. 117 (1926) (right of accountant to practice before Board of Tax Appeals). Indeed, the possessor of only a mortgage on a property has a "legally protected property interest" that is entitled to due process protection. *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 798 (1983).

Under Pennsylvania law, a property owner may redeem property that he does not occupy either by paying any delinquent taxes in full or by entering a plan to pay them in

installments. Importantly, the owner must take advantage of his or her redemption right *before* any tax sale occurs, as Pennsylvania offers no post-sale redemption opportunity. Thus, if an owner demonstrates before a sale that he is willing to pay the delinquent taxes, as Dr. Sachdev did, but cannot pay the total amount at that time, his only means of forestalling a sale is to enter into an installment agreement. Under this Court's precedents, the right to redeem property in this manner is a protected property interest. That right is of great significance and a means of security to those who hold it, just as welfare benefits, permits to operate motor vehicles, and employment are means of security to those who hold them.

Once the Court recognizes that a property interest exists, it next determines what procedures are constitutionally necessary prior to a deprivation of that interest. *See Morrissey*, 408 U.S. at 481; *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982). In making that determination, the Court typically employs the balancing test of *Mathews v. Eldridge*, 424 U.S. 319 (1976), which examines: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *See id.* at 334-35.

In the instant case, the private interest at stake is Valley View's right and sole opportunity to prevent its property from being sold to a third party for a fraction of its worth. That interest is obviously of great value to Dr. Sachdev, and the loss that he suffered – the complete divestiture of ownership – is the most serious that a property owner can experience.

Turning to the second factor, the risk of an erroneous deprivation is extremely high where neither the written notice provided to a property owner nor any employee of

the tax collector specifically informs the owner that he may retain his property by paying 25% of the taxes due, and then entering into an installment plan for payment of the balance. Dr. Sachdev's case illustrates that unacceptably high risk. When Dr. Sachdev visited the Bureau on August 21, 2003, he intended to pay the taxes due on all four properties and to remove them from the sale. When he presented the Bureau clerk with two checks that he believed covered the total due on all of the properties, the Bureau clerk informed him that the amount he had in hand was less than (in fact, it was 95.5% of) the total due. Although not equivalent to the taxes due on all four properties, the amount paid by Dr. Sachdev was far more than the 25% minimum that triggers the installment plan option. Dr. Sachdev was thus eligible to enter into an installment agreement, and the Bureau had an affirmative duty to so inform him under Pennsylvania law. *See, e.g.*, *In re Upset Sale of Properties*, 559 A.2d at 601; *York*, 639 A.2d at 1292-93; *Darden*, 629 A.2d at 323-24. By instead allowing Dr. Sachdev to leave the fourth property exposed to sale, the Bureau guaranteed that he would be erroneously deprived of his property. And, because Pennsylvania permits no post-sale redemption of properties not occupied by their owners, there was no opportunity to correct that deprivation after the failure of notice occurred.

With respect to the third factor, weighing burdens imposed on the state against the individual's rights, the balance clearly falls in favor of petitioner. Any additional fiscal or administrative burden from requiring tax claim bureau clerks to notify a property owner who personally tenders sufficient money to qualify for an installment plan option is minimal. Indeed, such a requirement involves no extra paper, postage, or written notice. Rather, it is the bureau clerk's simple duty to inform a property owner who receives a tax sale notice and appears in person at the bureau with at least 25% of the amount due that he can apply those monies in a manner that will remove his property from the tax sale. The only additional cost to the bureau, and the state, of providing such notification to

eligible property owners is an extra minute of the bureau clerk's time. Given that the goal of the tax claim bureau is to collect as much delinquent tax as it can, it is reasonable to require bureau clerks to engage with individuals who appear in person and attempt to pay the back taxes that they owe.

Consideration of the *Mathews* factors demonstrates that the Bureau's failure to notify Valley View of the right to retain its properties by entering into an installment agreement violated the Due Process Clause. The lack of notice to Dr. Sachdev resulted in the wrongful and erroneous deprivation of both his ownership interest in the Township Line Road property and his separate interest in redeeming the property from tax sale.

## II. THE DECISION BELOW CONFLICTS WITH DECISIONS OF SEVERAL STATE SUPREME COURTS

The Court has addressed on several occasions what type of *initial* notice is required before an individual may be stripped of his or her ownership interest in property. *See Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950) (holding that due process requires actual notice, and that notice sent by first-class mail suffices); *Jones v. Flowers*, 126 S. Ct. 1708 (2006) (holding that, when a mailed notice is returned as undeliverable, due process requires further reasonable efforts to provide notice). The Court, however, has never addressed whether a state may unconstitutionally deprive a person of a property interest by failing to give notice of state-sanctioned means of *redeeming* property after an owner receives initial notice of a deficiency. *See Mennonite Bd. of Missions*, 462 U.S. at 800 n.6 (specifically declining to address whether failing to notify a mortgagee of his right of redemption violated due process).

Several state supreme courts, however, have adjudicated the issue. The highest courts of New York, New Jersey, Georgia, Montana, and Alaska all have held that the right of redemption is a significant property interest

and that an individual is entitled to notice prior to deprivation of that right, *in addition to* the initial notice that his property is subject to tax sale. The Pennsylvania Commonwealth Court's holding below conflicts with these decisions. In concluding that the Bureau had no responsibility to notify Dr. Sachdev of his right to redeem his property through installment payments, the court failed to recognize the distinction that other state supreme courts have drawn between an individual's full ownership interest in property and his separate interest in the statutory right to redeem it.

Indeed, there is little clarity regarding whether and when in the tax sale process a state government must provide constitutionally adequate notice. *See* Alexander, 75 Ind. L.J. at 750. With no established guidelines, the states have devised an array of tax-collection procedures that test, and often fail, the boundaries imposed by due process. *See id.* at 750-51. This Court should grant certiorari to resolve this confusion and the division of authority among state courts.

**A. New York Court of Appeals – *McCann***

In *McCann v. Scaduto*, 519 N.E.2d 309 (N.Y. 1987), the New York Court of Appeals considered the constitutionality of a statutory scheme governing property tax collection. Under that scheme, before selling property at a tax sale, the county had to notify the owner by publication. *See id.* at 310. If the owner did not pay the taxes, the property was sold at an auction. The sale triggered a two-year redemption period, during which the owner could reclaim his property by paying the taxes, accrued interest, and fees. *See id.*

However, under the law, notice of the redemption period was due to the owner only three months before expiration of the two-year period (*i.e.*, after 21 months had already passed). No notice was due at the beginning of the redemption period, or at any time during the first 21 months. If the property owner, after receiving notice that he had three months to redeem his property, did not re-

deem it within that time, his right was foreclosed, and he was stripped of his legal title to the property. *See id.* at 310-11.

Noting that "large surpluses" are "at stake" when a state divests an owner of property based on a tax delinquency, the New York Court of Appeals held that this "troubling" scheme violated due process. *Id.* at 315. The court concluded that an individual must receive notice of his right of redemption that not only is separate from the initial notice of tax sale, but also is meaningful and "afford[s] a realistic opportunity to produce the funds necessary to avoid forfeiture of the title." *Id.* The court held that notice given three months prior to foreclosure of the redemption right, after a nearly two-year period during which no notice was given, did not provide a reasonable opportunity for an owner to raise the funds necessary to redeem his property, and therefore did not meet the standards of due process. *See id.*

Certainly, then, *no* opportunity for redemption – as in the instant case – cannot meet constitutional standards. Dr. Sachdev did not have a realistic opportunity to present the funds necessary to redeem his properties when, even after arriving at the Bureau with more than three times the requisite amount in hand, he was not notified of his redemption option.

### B. New Jersey Supreme Court – *Township of Montville*

In *Township of Montville v. Block 69, Lot 10*, 376 A.2d 909 (N.J. 1977), the New Jersey Supreme Court considered what notice was due when the township had initially notified property owners by mail of their delinquent taxes, but had failed to provide them with additional notice before taking steps to foreclose on properties that had already been subjected to tax sale. Under the relevant New Jersey statute, when the municipality sought to foreclose on properties it had acquired through tax sale, it was required to: (i) provide notice by posting; (ii) provide notice by publication; and (iii) file a complaint with the county

recording office seeking to bar all owners' rights of redemption. Notably, the statute did not require the municipality to inform the owners that it had filed a complaint to bar their rights of redemption, and the Township of Montville had not done so. *See id.* at 911.

Relying on this Court's decision in *Board of Regents v. Roth*, the New Jersey Supreme Court ruled that the statute was unconstitutional because the right of redemption is a property interest protected by the Due Process Clause, and the municipality accordingly had to provide notice before it could foreclose that right, even if it provided constitutionally adequate notice of the sale itself. *See id.* at 918. In determining what process was due with respect to the right of redemption, the court balanced the state and individual interests at stake and concluded that the property owner's rights outweighed any potential burden on the municipality, which was likely the cost of one postage stamp. *See id.* at 915 ("While the importance of the government's taxing power cannot be ignored, we must not forget that governmental concern for convenience or simplicity does not outweigh individual rights.").

The court in *Township of Montville* also emphasized the significant disparity between the value of the property ($306,000) and the amount of delinquent tax ($79,029). *See id.* at 918. In Dr. Sachdev's case, the relevant disparity is of even greater magnitude: he lost a parcel valued at $1 million, with no encumbrances, for failure to pay property taxes totaling $968.29.

**C. Georgia Supreme Court – *Funderburke***

In *Funderburke v. Kellet*, 364 S.E.2d 845 (Ga. 1988), the Georgia Supreme Court addressed the same issue: whether failure to provide meaningful notice of a property owner's right of redemption violates due process. Under the Georgia law at issue in *Funderburke*, the purchaser of property at a tax sale had to wait 12 months before he could apply to foreclose the owner's right of redemption. But the law provided no time limit for the application: a purchaser could apply at any time after 12 months had

passed. *See id.* at 846-47. Furthermore, the law provided that notice by publication alone was sufficient with respect to owners who lived outside of the county where the property was located. *See id.* at 847. In *Funderburke*, the out-of-state owners of a security deed to a parcel in DeKalb County challenged the purchaser's attempt to foreclose their right of redemption after the statutory period had passed.

The Georgia Supreme Court noted that, while the purchaser had failed to provide the owners of the deed with sufficient notice of *either* the tax sale *or* the foreclosure proceeding, the two were "distinct events" that should be equally afforded due process protection. *See id.* The court next determined what process the owner was due. Observing that deprivation of the right to redeem is the ultimate severance of a property owner's rights, the court found it imperative that the owner receive actual notice of when that right is to be foreclosed. *See id.* at 847-48.

In the instant case, Dr. Sachdev was not informed of his right to redeem his property by paying 25% of the taxes due. Because he was unaware that he even had such a right, he had no reason to know *when* that right would be foreclosed. The lower court's finding of no constitutional violation in such circumstances clearly conflicts with *Funderburke*'s holding that the Georgia statute violated due process.

**D. Montana Supreme Court – *Tax Lien Services***

Like the highest courts of New York, New Jersey, and Georgia, the Montana Supreme Court has long recognized that the right of redemption is a distinct property interest that must be afforded due process. In *Tax Lien Services v. Hall*, 919 P.2d 396 (Mont. 1996), the Montana Supreme Court addressed the constitutionality of a statutory scheme that required only constructive notice of the right of redemption in cases where a deed to property sold at a tax sale was executed significantly after the sale. Under the scheme, if property was sold at a tax sale, but a deed was not issued within three years and 30 days of the sale,

the purchaser of the deed thereafter had only to provide constructive notice that he intended to claim the property and foreclose on the owner's redemption right. The method of notice was once-weekly publication in a county newspaper for two consecutive weeks. *See id.* at 398-99. The owner had 30 days after the first publication to reclaim the property or to file an action attacking the validity of the deed. If he did not do so, he waived his right of redemption. *See id.*

In considering whether that scheme violated due process, the *Tax Lien Services* court held that the right of redemption was "'a vested property right,'" of which the owner can be divested "'except and only . . . by the giving of notice.'" *Id.* at 399 (quoting *Lowery v. Garfield County*, 208 P.2d 478, 484 (Mont. 1949)) (ellipsis added by *Tax Lien Services* court). Thus, the court held that, when a party undertakes a proceeding affecting an owner's right of redemption, constructive notice is not sufficient. If the owner's identity is known or readily discoverable, the party must provide him with actual notice. *See id.* The court concluded that, by allowing foreclosure of the right of redemption without adequate opportunity for the owner to respond, the scheme set forth in the Montana statute did not satisfy the requirements of due process. *See id.*

**E. Alaska Supreme Court – *Wallace***

Under the Alaska statute at issue in *Municipality of Anchorage v. Wallace*, 597 P.2d 148 (Alaska 1979), property owners had one year in which they could redeem and repurchase properties that had been foreclosed upon by the local government. Thirty days before the end of this redemption period (*i.e.*, after approximately 11 of the 12 months had passed), the local government was required to publish notice of the expiration of the redemption period and to send a copy of the notice by certified mail to the property owners. However, the local government was *not* required to provide notice at any point before the final 30 days of the period. *See id.* at 149-50.

If the one-year period passed without successful redemption, the local government had two options: (i) to offer the property at public auction, or (ii) to appropriate it for a public purpose. If it chose to hold a public auction, the owners still could repurchase the property up until the date of sale; however, if it chose to devote the property to a public purpose, the owners had no such option, and their right of redemption was permanently foreclosed. *See id.* at 150.

In *Wallace*, the local government selected the public-purpose option after the owners failed to pay the taxes necessary to reclaim their property before the redemption period expired. While the government had previously notified the owners both of the tax foreclosure proceedings and of the fact that they had a period of time in which to redeem their property, it did not notify the Wallaces that it was about to make a decision permanently extinguishing their right of redemption. *See id.* at 150-51. The Alaska Supreme Court, however, held that the owners *were* constitutionally entitled to notice of this event. *See id.* at 152 ("[a]s long as any vestige of ownership resided in the Wallaces, they cannot be divested of it by operation, or process of law, other than that which is 'due' them"). The court emphasized that the municipality had received a windfall (the property was worth $250,000, while the outstanding taxes were only $180, *see id.* at 150, 154) and that the minimal burden of sending the Wallaces a short notice concerning the extinction of their rights was greatly outweighed by the owners' interest in keeping their property. *See id.* at 153-54. According to the court, the owners deserved actual notice of this important final step in the foreclosure process; "mere gestures," such as notices of assembly meetings generally concerning tax-foreclosed properties, did not satisfy due process. *Id.*

In this case, a simple oral notification by the Bureau clerk when Dr. Sachdev appeared with the qualifying amount of funds in hand would have sufficed as the actual notice required prior to foreclosure of the right of redemp-

tion. The windfall received by the state at the taxpayer's expense here is far more egregious than in *Wallace*, because Dr. Sachdev was deprived of property worth $1 million for a $968 tax delinquency, and the state obtained a $15,000 payment for the parcel.

The lower court's decision clearly conflicts with the holdings of *McCann*, *Township of Montville*, *Funderburke*, *Tax Lien Services*, and *Wallace*, all of which recognize that a property owner is entitled to notice of his right of redemption *in addition to* initial notice of a potential tax sale.

## III. THE QUESTION PRESENTED IS OF GREAT PRACTICAL IMPORTANCE

The issue in this case is of enormous importance for ensuring consistency and clarity among the states with respect to property tax sales and the application of this Court's due process precedents. Because most jurisdictions have complex and multi-stage tax foreclosure procedures, the absence of guidance regarding the stages at which the government must provide notice has created widespread confusion. *See* Alexander, 75 Ind. L.J. at 750. Exacerbating the confusion is the fact that jurisdictions within each state may develop their own foreclosure procedures, with varying numbers of stages, as they see fit. *See* Ellen F. Friedman, *The Constitutionality of Request Notice Provisions in In Rem Tax Foreclosures*, 56 Fordham L. Rev. 1209, 1212 n.27 (1988); Alexander, 75 Ind. L.J. at 771-72.

While the Constitution is not a straitjacket for tax collection procedures, due process requires, at a minimum, that owners not be deprived of their property through tax sales when, upon tendering the funds necessary to avoid a sale under state law, they can readily be given notice of their right of redemption. Moreover, the denial of meaningful notice to taxpayers such as Dr. Sachdev undermines the goal of tax collection agencies. That goal is to extract payment from delinquent taxpayers by threatening sale, not to undertake lengthy proceedings that result

in sales for far less than market value and windfalls to the state and third parties. *See* Friedman, 56 Fordham L. Rev. at 1211, 1213-14; Alexander, 75 Ind. L.J. at 757.

Finally, greater certainty and efficiency is particularly critical for rules governing property taxes. Property is obviously a core asset for persons, and property taxes typically account for almost one-third of a municipality's general revenue. *See* Alexander, 75 Ind. L.J. at 755; *see also* Friedman, 56 Fordham L. Rev. at 1209 n.1.

The Court's intervention is necessary to safeguard the due process rights of individuals who face loss of an extremely significant property interest: their interest in retaining ownership of property through a redemption process. The Court should grant certiorari and confirm that taxpayers such as Dr. Sachdev are entitled to meaningful notice prior to deprivation of their right of redemption.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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August 31, 2006

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# APPENDIX

## TABLE OF CONTENTS

Page

Order of the Supreme Court of Pennsylvania, *Nagpal, et al. v. Northampton County Tax Claim Bureau, et al.*, No. 868 MAL 2005 (May 3, 2006) ..... 1a

Memorandum Opinion and Order of the Commonwealth Court of Pennsylvania, *Nagpal, et al. v. Northampton County Tax Claim Bureau, et al.*, No. 2692 C.D. 2004 (July 20, 2005) ..... 2a

Decision and Order of the Court of Common Pleas of Northampton County, Pennsylvania, *Nagpal, et al. v. Northampton County Tax Claim Bureau, et al.*, No. C-48-CV-2003-6375 (Dec. 3, 2004) ..... 10a

Statutory Provisions Involved:

Real Estate Tax Sale Law, 72 Pa. Cons. Stat. §§ 5860.101 *et seq.*:

§ 5860.201 ..... 18a
§ 5860.205 ..... 18a
§ 5860.208 ..... 20a
§ 5860.308 ..... 21a
§ 5860.601 ..... 24a
§ 5860.602 ..... 27a
§ 5860.603 ..... 30a
§ 5860.604 ..... 31a
§ 5860.605 ..... 31a
§ 5860.606 ..... 32a
§ 5860.607 ..... 32a
§ 5860.607a ..... 35a
§ 5860.608 ..... 36a
§ 5860.609 ..... 37a

Letter from Supreme Court Clerk regarding extension request for filing a petition for a writ of certiorari (July 24, 2006) ..... 38a

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

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No. 868 MAL 2005

DR. NERESH NAGPAL, DR. BEENA NAGPAL, AND LITTLE CREEK ASSOCIATES, T/A VALLEY VIEW PARTNERS,
*Petitioners,*

v.

NORTHAMPTON COUNTY TAX CLAIM BUREAU AND ANTHONY MALINOWSKI,
*Respondents.*

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Petition for Allowance of Appeal
from the Order of the Commonwealth Court

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**ORDER**

**PER CURIAM:**

AND NOW, this 3rd day of May, 2006, the Petition for Allowance of Appeal is hereby DENIED.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 2692 C.D. 2004

DR. NERESH NAGPAL, DR. BEENA NAGPAL, AND LITTLE CREEK ASSOCIATES, T/A VALLEY VIEW PARTNERS,
*Appellants*,

v.

NORTHAMPTON COUNTY TAX CLAIM BUREAU AND ANTHONY MALINOWSKI,
*Appellees*.

[Argued June 9, 2005]

BEFORE:
HONORABLE JAMES GARDNER COLINS, President Judge
HONORABLE BONNIE BRIGANCE LEADBETTER, Judge (P.)
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION

BY SENIOR JUDGE KELLEY FILED: July 20, 2005

Dr. Neresh Nagpal, Dr. Beena Nagpal, and Little Creek Associates, t/a Valley View Partners (hereinafter collectively referred to as Petitioners) appeal from an order of the Court of Common Pleas of Northampton County (trial court) denying and dismissing Petitioners' objections to a tax sale conducted on September 15, 2003 of a parcel known as Parcel L6-17-5C or the Township Line Road property. We affirm.

Dr. Ranjan Sachdev is the managing partner of Valley View Partners. Dr. Sachdev had an ownership interest in four properties that were scheduled for tax upset sale on September 15, 2003. The four delinquent properties were parcel M7-1-12E (Santee Mill Road), parcel N6 NW 2-10-1 (294 Wedgewood Road), parcel L6-17-5C (Township Line Road), and parcel L6-11-23 (Little Creek Drive). The Santee Mill Road and Wedgewood Road properties were titled in the names of Dr. Sachdev and his wife; Valley View Partners owned the Township Line Road property; and Little Creek Associates, a partnership between Dr. Sachdev and his wife, owned the Little Creek Drive property.

On the morning of August 21, 2003, Dr. Sachdev telephoned the Tax Claim Bureau's office and asked for the dollar figure for the taxes due on the four properties. Later that day, Dr. Sachdev appeared at the counter of the Tax Claim Bureau's office and made payments toward the delinquent taxes.[1] Dr. Sachdev tendered two checks, and by his own admission the two checks were not sufficient to pay all the taxes that were due and owing on all four of the properties.[2] The payments were applied to satisfy the delinquent taxes for the Santee Mill Road, Wedgewood Road, and Little Creek Drive properties. None of the amounts tendered on August 21, 2003, were applied to the taxes due and owing on the Township Line Road parcel. The payments as applied on August 21, 2003, were the exact amounts due and owing on the three properties to which they were credited. On September 15,

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[1] Dr. Sachdev identified Sarah Branham as the employee who served him. Sarah Branham did not recall receiving payments from Dr. Sachdev, nor did she recall having a conversation with him.

[2] The bank checks were for $18,155.23, and $2,324.43 respectively, which represented $20,479.66 of the $21,447.95 necessary to prevent all four parcels from tax upset sale.

2003, Dr. Sachdev learned the Township Line Drive property was sold to Anthony Malinowski at a tax sale.[3]

Thereafter, Petitioners filed objections to the upset tax sale contending that the tax sale should be invalidated because the Tax Claim Bureau failed to advise Dr. Sachdev of his ability to make installment payments on the delinquent taxes. Upon review, the trial court noted that pursuant to Section 603 of the Real Estate Tax Sale Law[4] (Law) and this Court's decision in In re Upset Sale of Properties Against Which Delinquent 1981 Taxes Were Returned to Tax Claim Unit on or about the First Monday of May 1982: Appeal of Lawrence Marra, 559 A.2d 600 (Pa. Cmwlth. 1989), the criteria for creating an affirmative duty on the Tax Claim Bureau to notify a delinquent taxpayer of the option to enter into an installment agreement is that the property owner pays at least 25% of the tax due and the property owner makes a prima facie showing of qualifying for the stay of the sale.[5] In addition, such an affirmative duty is not met by merely printing the availability of this option on the notice sent to the taxpayer. The trial court found that Dr. Sachdev did not meet the required criteria; therefore, the Tax Claim Bureau did not err by neglecting to inform Dr. Sachdev directly of the installment plan option.

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[3] A family illness kept Dr. Sachdev out of town for most of the period between August 21, and September 15, 2003.

[4] Act of July 7, 1947, P.L. 1368, as amended, 72 P.S. §5860.603. Section 603 of the Law allows for the owner of the subject property, at the discretion of the Tax Claim Bureau and prior to the actual sale, to:

> enter into an agreement, in writing, with the bureau to stay the sale of the property upon the payment of twenty-five per centum (25%) of the amount due on all tax claims and tax judgments filed or entered against such property . . . . and agreeing therein to pay the balance . . . . in not more than three (3) installments all within one (1) year of the date of said agreement. . . .

[5] The trial court found that Dr. Sachdev received actual notice of the tax delinquency and the scheduled date for tax sale. The issue of notice is not before this Court.

In so finding, the trial court rejected Dr. Sachdev's one sided version of the events surrounding the payments of the delinquent taxes and found that Dr. Sachdev did not pay at least 25% of the taxes owed on the Township Line Road property. Rather, he paid with two checks written in the exact amount required to remove three of the properties from the scheduled tax sale, which were the properties in which he held the greatest ownership interest. The trial court found that to the extent that Dr. Sachdev directed the clerk at the Tax Claim Bureau to apply the payments in different proportions than were actually made, Dr. Sachdev's instructions were ambiguous and vague and reasonably interpreted by the personnel at the Tax Claim Bureau. The trial court found further that the Tax Claim Bureau did not have an affirmative duty to advise Dr. Sachdev of his opportunity to make installment payments on the balance, that he did not pay 25% of the taxes owed on the Township Line Road property, that no tax payments had been made in the last two years on the Township Line Road property, and that Dr. Sachdev did not present any evidence that would indicate that he would have qualified for a stay of the tax sale or that he would have qualified to make installment payments.

Accordingly, the trial denied and dismissed Petitioners' objections to the September 15, 2003 upset tax sale of the Township Line Road property. This appeal by Petitioners followed.[6]

Herein, Petitioners raise the following issues:

1. Whether the trial court's conclusion that Section 603 did not apply to the facts of record in this case constituted an error of law;

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[6] This Court's review is limited to determining whether the trial court abused its discretion, rendered a decision without supporting evidence, or clearly erred as a matter of law. Darden v. Montgomery County Tax Claim Bureau, 629 A.2d 321 (Pa. Cmwlth. 1993).

2. Whether the trial court erred by not concluding that the Tax Claim Bureau's proceedings were irregular and illegal;

3. Whether the trial court rendered a decision without supporting evidence.

Petitioners first argue that the trial court erred in not applying Section 603 of the Law to the facts of this case. Petitioners argue that the 25% requirement of Section 603 was satisfied when Dr. Sachdev tendered the checks to the Tax Claim Bureau on August 21, 2003. Petitioners contend that because the checks represented 95.5% of the payment necessary to remove all four properties from the scheduled September 15, 2003 tax sale and because the Tax Claim Bureau accepted Dr. Sachdev's payment, the Tax Claim Bureau had an affirmative duty to advise him of his opportunity to stay the sale of any or all of his properties by entering into the installment payment agreement as provided in Section 603.

As noted previously herein, Section 603 of the Law allows for the owner of the subject property, at the discretion of the Tax Claim Bureau and prior to the actual sale, to enter into an agreement, in writing, with the Tax Claim Bureau to stay the sale of the property upon the payment of 25% of the amount due on all tax claims and tax judgments filed or entered against such property. The plain language of Section 603 means that a taxpayer must pay 25% of the amount due on each individual property and not on the aggregate amount owed on multiple parcels.

Moreover, the trial court rejected Dr. Sachdev's testimony that he intended for the payments that he made on August 21, 2003 to be apportioned among all four properties and specifically found that Dr. Sachdev did not pay 95.5% of the tax due on all four properties but instead paid the full amount due on the other three properties. The trial court also specifically found that Dr. Sachdev did not pay at least 25% of the taxes due on the Township Line Road property.

Thus, the trial court properly concluded that the Tax Claim Bureau did not have an affirmative duty to inform Dr. Sachdev that he could enter into an installment plan to pay the outstanding taxes. As such, we reject Petitioners' arguments to the contrary.

Next, Petitioners argue that the trial court erred by not concluding that the Tax Claim Bureau proceedings were irregular and illegal. Petitioners' argument is based on their assertions that Dr. Sachdev's instructions to the clerk that his payment on August 21, 2003 was to be applied to the larger parcel in terms of acreage clearly meant the Township Line Road parcel rather than the smaller Little Creek Drive parcel. Petitioners contend that contrary to Dr. Sachdev's express instructions as to which parcel to apply his payment, the Tax Claim Bureau instead applied his payment to the smaller Little Creek Drive property and then printed a faint receipt which it stapled to the Township Line Road Tax Sale Notice it handed back to Dr. Sachdev. Petitioners point out that the clerk then returned the Little Creek Drive property Tax Sale Notice to Dr. Sachdev with no receipt attached. This conduct, Petitioners' contend, substantially contributed to Dr. Sachdev's mistaken belief that he had paid the outstanding taxes owed on the Township Line Road property and that the property would be removed from the September 15, 2003 tax sale.

As stated previously by this Court, "[i]t is clear that the only acceptable basis for setting aside a tax sale on exceptions is a finding by a court that the proceedings of the bureau involved in the sale were irregular or illegal." In Re: Sale of Real Estate by Venango County Tax Claim Bureau for 1977 Delinquent Taxes, 449 A.2d 879, 881 (Pa. Cmwlth. 1982) (citing Section 607(d) of the Law, 72 P.S. §5860.607(d)). Herein, however, the record shows that the Tax Claim Bureau fully complied with the provisions of the Law.

The trial court specifically found that Dr. Sachdev's alleged instructions to the Tax Claim Bureau's clerk on

August 21, 2003 were vague and ambiguous and that his instructions were reasonably interpreted by the Tax Claim Bureau. Thus, we conclude that the Tax Claim Bureau was not responsible for Dr. Sachdev's mistaken belief that he had paid the outstanding taxes on the Township Line Road property.

Finally, Petitioners argue that the trial court's decision is not supported by substantial evidence. Petitioners contend that several of the trial court's findings were simply contrary to undisputed evidence of record. Petitioners argue that the trial court relied upon unsubstantiated inferences and pure speculation to reach erroneous conclusions and arrived at conclusions contrary to its own findings of fact.

Upon review of the record, we conclude that the trial court's findings are supported by substantial evidence. Petitioners' arguments are simply an attempt to have this Court reweigh the evidence and make findings consistent with Dr. Sachdev's versions of events. However, it is within the exclusive province of the trial court, as fact-finder, to weigh the evidence, to make credibility determinations and to draw reasonable inferences from the evidence presented. Smith v. Tax Claim Bureau, 834 A.2d 1247 (Pa. Cmwlth. 2003).

Accordingly, the trial court's order is affirmed.

/s/ JAMES R. KELLEY

JAMES R. KELLEY, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 2692 C.D. 2004

DR. NERESH NAGPAL, DR. BEENA NAGPAL, AND LITTLE CREEK ASSOCIATES, T/A VALLEY VIEW PARTNERS,
*Appellants,*

v.

NORTHAMPTON COUNTY TAX CLAIM BUREAU AND ANTHONY MALINOWSKI,
*Appellees.*

**ORDER**

AND NOW, this 20th day of July, 2005, the order of the Court of Common Pleas of Northampton County in the above captioned matter is AFFIRMED.

/s/ JAMES R. KELLEY

JAMES R. KELLEY, Senior Judge

IN THE COURT OF COMMON PLEAS
OF NORTHAMPTON COUNTY, PENNSYLVANIA
CIVIL DIVISION – LAW

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C-48-CV-2003-6375

DR. NERESH NAGPAL, DR. BEENA NAGPAL, AND
LITTLE CREEK ASSOCIATES, T/A VALLEY VIEW PARTNERS,
*Petitioners*,

v.

NORTHAMPTON COUNTY TAX CLAIM BUREAU AND
ANTHONY MALINOWSKI,
*Respondents*.

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[Dec. 3, 2004]

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## DECISION OF THE COURT

This dispute arises from the objections filed by the Petitioners to the Upset Sale that occurred on September 15, 2003. The Petitioners contend that the sale should be invalidated because the taxing unit failed to advise the taxpayer of his ability to make installment payments on delinquent taxes. The Court heard the testimony and contentions of the parties on the non-jury trial list on June 15, 2004. Based on the evidence presented at trial, we make the following Findings of Fact.

## FINDINGS OF FACT

1. Prior to August 21, 2003, Dr. Sachdev had an ownership interest in four properties that were scheduled for tax upset sale on September 15, 2003. N.T. 60, 81.

2. The four delinquent properties were parcel M 7-1-12 E (Santee Mill Road) parcel N 6 NW 2-10-1 (294 Wedgewood Road) parcel L 6-17-5C (Township Line Road) and parcel L 6-11-23 (Little Creek Drive). N.T. 60.

3. The Santee Mill Road and Wedgewood Road properties are titled in the names of Dr. Sachdev and his wife. N.T. 58-60, 81.

4. He was the managing partner for Valley View Partners which owned acreage on Township Line Road. N.T. 59, 60, 81.

5. Little Creek Associates, a partnership between Dr. Sachdev and his wife, was the owner of the Little Creek Drive property. N.T. 59-60, 81.

6. On the morning of August 21, 2003, Dr. Sachdev telephoned the Tax Claim Bureau's office. He asked for the dollar figure for the taxes due on the four properties and wrote that amount down. N.T. 58-60, 81.

7. Later in the day of August 21, 2003, Dr. Sachdev appeared at the counter of the Tax Claim Bureau's office and made payments toward the delinquent taxes. He tendered two checks, and by his own admission the two checks were not sufficient to pay all the taxes that were due and owing on all four of the properties. N.T. 66.

8. An employee who Dr. Sachdev identified as Sarah Branham served him. N.T. 64.

9. Sarah Branham does not recall receiving payments from Dr. Sachdev, nor does she recall having a conversation with him. N.T. 44-45.

10. The payments were applied to satisfy the delinquent taxes for the Santee Mills Road, Wedgewood Road and Little Creek Drive properties. N.T. 65. Those properties were not exposed to an upset sale.

11. None of the amounts tendered on August 21, 2003, were applied to the taxes due and owing on the Township Line Road parcel.

12. The payments as applied on August 21 2003, were the exact amounts due and owing on the three properties to which they were credited.

13. A family illness kept Dr. Sanchev out of town for most of the period after August 21, 2003 until September 15, 2003. N.T. 65, 72.

14. On September 15, 2003, Dr. Sachdev learned that the Townships Line Drive property was sold at the tax sale. N.T. 15, 73-74.

## DISCUSSION

This case does not involve a "lack of notice" claim. Here, Dr. Sachdev argues that the statutory requirements found in 72 P.S. § 5860.603 were not satisfied, and therefore, the sale of the Townships Line Road parcel was invalid. Section 603 of the Law allows for the owner of the subject property, at the discretion of the bureau and prior to the actual sale, to:

> . . . enter into an agreement, in writing, with the bureau to stay the sale of the property upon the payment of twenty-five per centum (25%) of the amount due on all tax claims and tax judgments filed or entered against such property . . . and agreeing therein to pay the balance . . . in not more than three (3) instalments [*sic*] all within one (1) year of the date of said agreement . . . .

Id.

Under certain circumstances our appellate courts have interpreted Section 603 so as to create an affirmative duty on the taxing unit to notify a delinquent taxpayer of the option to enter into an installment agreement. In a case originating in Northampton County, the Commonwealth Court held that "where the property owner paid at least twenty-five percent, which was kept by the Tax Unit and not returned, and the property owner made a prima facie showing of qualifying for the stay of the sale, the Tax Unit had an affirmative duty to advise him of his opportunity to make installment payments on the balance. . . ." In re Upset Sale of Properties Against Which Delinquent 1981 Taxes Were Returned to Tax Claim Unit on or About the First Monday of May, 1982, 559 A.2d 600, 601 (Pa.

Commw. Ct. 1989). Such an affirmative duty is not met by merely printing the availability of this option on the notices sent to the taxpayer.[1] See id.

We do not find that Dr. Sachdev meets these criteria, and therefore the Tax Claim Bureau did not err by neglecting to inform Dr. Sachdev directly of the installment plan option. See also Appeal of Quality Home Improvement Co., 458 A.2d 1074, 1076 (Pa. Commw. Ct. 1983).

Dr. Sachdev did not pay twenty-five percent of the taxes owed on the Township Line Road parcel. In order to establish that he has met this criteria, he argues that when he appeared at the Tax Claim Bureau's office, he paid approximately ninety five percent of what was owed to remove all four of his properties from the scheduled tax sale. Upon closer inspection, however, the record reveals that he did not make any payment on the delinquent taxes of the property that was sold at the tax sale. Rather, he appeared at the office with two checks in the exact amounts required to remove three of the properties – incidentally the properties in which he held the greatest ownership interest – from the scheduled tax sale.

We must back away from Dr. Sachdev's self-serving declarations concerning the directions he supposedly gave to the Bureau's clerk on August 21st. Although this Court acknowledges that the purpose of the tax sale law is the collection of delinquent taxes and not to penalize delinquent taxpayers, the letter of the law should not be ignored. See, In re Upset Sale, Tax Claim Bureau of Montgomery County, 499 A.2d 12 (PA. Cmwlth. 1985). Furthermore, in addition to its self-serving nature, Dr. Sachdev's testimony about his alleged instructions to pay the "bigger" parcel is ambiguous and vague. While this court sympathizes with Dr. Sachdev's position, his obvious interest in the outcome of the case makes his one-

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[1] At the bottom of the notice sent to Dr. Sachdev, it advised the taxpayer of the availability of the installment plan option. Pl.'s Ex. 8C, N.T. 39.

sided version too unreliable to validate any contemplated agreement between the parties to stay the tax sale.

We must emphasize that the checks were made out in the exact amounts necessary to remove three of the four properties from tax sale, and that the only property not removed from tax sale was the property owned through the partnership Valley View Associates. Writing these checks in these precise amounts dissuades the Court from concluding that Dr. Sachdev intended to have the money dispersed among all four of the properties. Even according to his own testimony, he did not instruct the clerk to apportion the money between the properties, but rather to apply the payment toward one parcel instead of the other. Further, we note that the checks used to apply payment were drawn from Dr. Sachdev's personal bank accounts, rather than a Valley View Associates account. Therefore, the record also is clear that the payments made by Dr. Sachdev from his personal assets were applied to the properties that he owned personally or in a partnership with his wife. This, along with the other circumstantial evidence, makes it entirely plausible that it was not Dr. Sachdev's intent to make payments approximately in an amount of 95% of what would remove all four of the properties from tax sale, but rather to remove all the properties he and/or his wife owned from tax sale entirely, and not to make any payment toward the property he owned jointly without outside individuals. We, therefore, find that the Tax Claim Bureau did not err by failing to affirmatively tell Dr. Sachdev that he could make installment payments in order to remove the Township Line Road property from the tax sale.

## CONCLUSIONS OF LAW

1. The four delinquent properties were Parcel M7-1-12E (Santee Mill Road), Parcel N6NW2-10-1 (294 Wedgewood Road), Parcel L6-17-5C (Township Line Road), and Parcel L6-11-23 (Little Creek Drive).

2. Parcel L6-17-5C, the Township Line Road property was scheduled for a tax sale and was subsequently sold at

sale on September 15, 2003, to the highest bidder, Anthony Malinowski.

3. Dr. Sachdev received actual notice of the tax delinquency and the date for which the property was subject to a tax sale. The Tax Claim Bureau did not commit an error of law and complied with the statutory requirements for giving notices to the taxpayer.

4. The payments made by Dr. Sachdev at the Tax Claim Bureau's office were sufficient to remove three of the four parcels from the scheduled tax sale. The payments were applied directly to cure the tax delinquency of Parcel M7-1-12E (Santee Mill Road), Parcel N6NW2-10-1 (294 Wedgewood Road), and Parcel L6-11-23 (Little Creek Drive). No payments were made at all concerning Parcel L6-17-5C (Township Line Road). To the extent that Dr. Sachdev directed the clerk at the Tax Claim Bureau to apply payments in different proportions than were actually made, Dr. Sachdev's instructions were ambiguous and reasonably interpreted by the personnel at the Tax Claim Bureau.

5. The Tax Claim Bureau did not have an affirmative duty to advise Dr. Sachdev of his opportunity to make installment payments on the balance. In re Upset Sale of Properties Against Which Delinquent 1981 Taxes Were Returned to Tax Claim Unit on or About the First Monday of May, 1982, 559 A.2d 600, 601 (Pa. Commw. Ct. 1989). The notices sent to Dr. Sachdev advised him in writing of the availability of entering into an installment agreement.

6. Dr. Sachdev did not pay twenty-five percent of the taxes owed on the Township Line Road parcel. No tax payments had been made in the last two years on the Township Line Road property.

7. Dr. Sachdev did not present any evidence that would indicate he would have qualified for a stay of the tax sale nor that he would have qualified to make installment plans.

8. Between August 21, 2003, and through the date of the scheduled tax sale on September 15, 2003, Dr. Sachdev did not make any payments on the outstanding tax delinquency that he knew existed on the property.

9. The Tax Claim Bureau strictly complied with the applicable law and there is therefore no reason to set aside the tax sale. Glyder Realty Corp. Appeal, 461 A.2d 1329 (Pa. Commw. Ct. 1983). Appeal of By-Pass, Inc., 445 A.2d 850 (PA. Cmwlth. 1982).

WHEREFORE, we enter the following:

IN THE COURT OF COMMON PLEAS
OF NORTHAMPTON COUNTY, PENNSYLVANIA
CIVIL DIVISION – LAW

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C-48-CV-2003-6375

DR. NERESH NAGPAL, DR. BEENA NAGPAL, AND
LITTLE CREEK ASSOCIATES, T/A VALLEY VIEW PARTNERS,
*Petitioners*,

v.

NORTHAMPTON COUNTY TAX CLAIM BUREAU AND
ANTHONY MALINOWSKI,
*Respondents.*

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**ORDER OF COURT**

AND NOW, this 3rd day of December, 2004, the objections to the tax sale conducted on September 15, 2003, of Parcel L6-17-5C are DENIED and DISMISSED.

BY THE COURT:

/s/ MICHAEL V. FRANCIOSA

MICHAEL V. FRANCIOSA,
SENIOR JUDGE

Relevant provisions of Pennsylvania's Real Estate Tax Sale Law, 72 Pa. Cons. Stat. §§ 5860.101 *et seq.*, provide as follows:

## ARTICLE II. Tax Claim Bureau

### § 5860.201. Creation of bureaus.

Except as otherwise provided in section 201.1,[1] a Tax Claim Bureau is hereby created in each county in the office of the county commissioners.

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### § 5860.205. System of accounting and distribution.

(a) In each county bureau a system of accounting and distribution of all moneys collected or received under the provisions of this act shall be established in the bureau as may be determined by the county commissioners, the county controller, if any, and county treasurer.

(b) The bureau shall keep an accurate account of all money recovered and received by it under this act and maintain a separate account for each property.

(c) Money received on account of costs, fees and expenses advanced by any taxing district shall be repaid to the taxing district making the advance. Other money collected under this act shall be subject, first, to a commission of five per centum (5%) of all money collected to be retained by the bureau to offset costs of the administration of this act. Interest earned on money held by the bureau prior to distribution shall also be retained by the bureau for administrative costs.

(c.1) It shall then be the duty of the bureau to distribute the entire remaining balance of the moneys collected, except moneys collected through any tax sale under the provisions of this act, to the taxing districts at least once

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[1] 72 P.S. § 5860.201a.

every three (3) months in proportion to the taxes due each taxing district.

(d) It shall be the duty of the bureau to distribute all moneys collected as the result of any tax sale conducted under the provisions of this act, less the deductions authorized by subsection (c), in the following manner and according to the following priority:

1. First, to the Commonwealth, by payment to the State Treasurer through the Department of Revenue, for satisfaction of tax liens of the Commonwealth only if the total amount of such liens or such portion thereof have been included in the purchase price and paid by the purchaser or the property is sold at judicial sale pursuant to this act.

2. Second, to the respective taxing districts in proportion to the taxes due them.

3. Third, to taxing districts or municipal authorities for satisfaction of municipal claims.

4. Fourth, to mortgagees and other lien holders, in order of their priority, for satisfaction of mortgages and liens as may appear of record, whether or not discharged by the sale.

5. Fifth, to the owner of the property.

(e) Prior to the actual distribution required by subsection (d), the bureau shall petition the court of common pleas for a confirmation of distribution. The petition shall set forth a proposed schedule of distribution for each account and shall request the court to issue a rule to show cause on each distribution why the court should not confirm the distribution as proposed. The rule to show cause and a copy of the petition shall be served by first class mail upon each distributee and upon the purchaser, with proof of mailing to the last residence or place of business of the distribution known to the bureau and to the purchaser at the address given to the bureau. If the rule to show cause

is not returned by any distributee or purchaser on or before the time set for its return, the court shall forthwith confirm the distribution absolutely. If any distributee or purchaser makes a return of the rule within the time set by the court, the court shall forthwith hear any objections and exceptions to the proposed distribution and thereafter adjust the schedule of distribution as it deems just and equitable according to law and confirm the distribution absolutely as adjusted. An absolute confirmation of distribution by the court shall be final and nonappealable with respect to all distributions listed in the petition.

(f) Whenever no claim for payment of any balance due the owner of the property is presented by or on behalf of the owner within a period of three (3) years of the date of the sale, the balance of the proceeds shall be distributed in the respective taxing districts pro rata based on the millage imposed by the respective taxing districts as of the year such property was sold. Interest earned by the proceeds of the sale during the three-year period shall be retained by the county.

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**§ 5860.208. Agent of taxing districts; lien certificates.**

The bureau and the director thereof shall, in the administration of this act, be the agent of the taxing districts whose tax claims are returned to the bureau for collection and prosecution under the provisions of this act, and in the management and disposition of property in accordance with the provisions of this act.

The bureau shall, upon request of any person, furnish a lien certificate showing the taxes due on any property as shown by its records. A fee of not more than five dollars ($5) shall be charged for any such certificate and shall be payable to the county.

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## ARTICLE III. Lien of Taxes; Filing of Tax Returns; Adjudication

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### § 5860.308. Notice of filing of returns and entry of claim.

(a) Not later than the thirty-first day of July of each year, the bureau shall give only one notice of the return of said taxes and the entry of such claim in one envelope for each delinquent taxable property, by United States registered mail or United States certified mail, return receipt requested, postage prepaid, addressed to the owners at the same address listed on the form returned by the tax collector for taxes that are delinquent. In the case of property owned by joint tenants, tenants in common, or husband and wife as tenants by the entireties, the bureau may give the notice required by this section by forwarding only one notice addressed to such joint tenants, tenants in common or husband and wife at the same post office address. If the owner of the property is unknown and has been unknown for a period of not less than five years, such notice shall be given only by posting on the property affected. If no post office address of the owner is known or if a notice mailed to an owner at such last known post office address is not delivered by the postal authorities, then notice as herein provided shall be posted on the property affected. If the property owner has entered into an agreement with the bureau for the payment of the delinquent taxes, the posting is not necessary. Each mailed and posted notice shall, (1) show all the information shown on the claim entered, (2) state that if payment of the amount due the several taxing districts for said taxes is not made to the bureau on or before the thirty-first day of December next following, and no exceptions thereto are filed, the said claim shall become absolute, (3) state that on July first of the year in which such notice is given a one (1) year period for discharge of tax claim shall commence or has commenced to run, and that if full payment

of taxes is not made during that period as provided by this act, the property shall be advertised for and exposed to sale under this act, and (4) state that there shall be no redemption after the actual sale.

(a.1) In addition to the requirements of subsection (a)(1), (2), (3) and (4), each mailed and posted notice shall state that the owner of any owner-occupied real estate can apply for an extension of the period for discharge of tax claim for up to twelve (12) additional months under and subject to the provisions of sections 502.1[1] and 503.1.[2]

(b) Notice given in the manner provided by this section shall constitute proper service on the owner. A statement in the claim entered that due notice of the same was given shall be conclusive evidence that notice was given as required by law. The notice given in the manner provided by this section shall contain the following provision which shall be conspicuously placed upon said notice and set in at least 10-point type in a box as follows:

WARNING

"IF YOU FAIL TO PAY THIS TAX CLAIM OR FAIL TO TAKE LEGAL ACTION TO CHALLENGE THIS TAX CLAIM, YOUR PROPERTY WILL BE SOLD WITHOUT YOUR CONSENT AS PAYMENT FOR THESE TAXES. YOUR PROPERTY MAY BE SOLD FOR A SMALL FRACTION OF ITS FAIR MARKET VALUE. IF YOU PAY THIS TAX CLAIM BEFORE JULY 1, 19__, YOUR PROPERTY WILL NOT BE SOLD. IF YOU PAY THIS CLAIM AFTER JULY 1, 19__, BUT BEFORE ACTUAL SALE, YOUR PROPERTY WILL NOT BE SOLD BUT WILL BE LISTED ON ADVERTISEMENTS FOR SUCH SALE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL YOUR ATTORNEY, THE TAX CLAIM BUREAU AT THE FOLLOWING TELEPHONE

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[1] 72 P.S. § 5860.502a.

[2] 72 P.S. § 5860.503a.

NUMBER _____, OR THE COUNTY LAWYER REFERRAL SERVICE."

(c) The costs of such mailed and posted notices shall be part of the costs of the proceedings and shall be paid by the owner the same as other costs.

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## ARTICLE VI. Sale of Property

(a) Upset Sale

### § 5860.601. Date of sale.

(a) The bureau shall schedule the date of the sale no earlier than the second Monday of September and before October 1, and the sale may be adjourned, readjourned or continued. No additional notice of sale is required when the sale is adjourned, readjourned or continued if the sale is held by the end of the calendar year. The bureau may, for convenience and because of the number of properties involved, schedule sales of property in various taxing districts or wards on different dates. Except as otherwise provided in this article, all sales shall be held by the bureau by the end of the calendar year.

(1) The bureau shall sell the property if all of the following are met:

(i) A tax claim has become absolute.

(ii) The property has not been discharged from the tax claim nor removed from sale under section 603; or a tax judgment has been entered against the property prior to January 1, 1948, and is unsatisfied, and a sale of the property has not been stayed by agreement under this article.

(iii) The property is not in the possession of the sequestrator.

(2) Property that is essential to the business of a quasi-public corporation shall not be sold.

(3) No owner-occupied property may be sold unless the bureau has given the owner occupant written notice of such sale at least ten (10) days prior to the date of actual sale by personal service by the sheriff or his deputy or person deputized by the sheriff for this purpose unless the county commissioners, by resolution, appoint a person or persons to make all personal services required by this clause. The sheriff or his deputy shall make a return of

service to the bureau, or the persons appointed by the county commissioners in lieu of the sheriff or his deputy shall file with the bureau written proof of service, setting forth the name of the person served, the date and time and place of service, and attach a copy of the notice which was served. If such personal notice cannot be served within twenty-five (25) days of the request by the bureau to make such personal service, the bureau may petition the court of common pleas to waive the requirement of personal notice for good cause shown. Personal service of notice on one of the owners shall be deemed personal service on all owners.

(b) No property shall be exposed to sale where the delinquent taxes involved in a claim are being paid by the owner under any law abating penalties, interests and costs, or either, unless there has been a default by the owner in payment, in which case the sale of the property shall be proceeded with, as herein provided, at the time fixed for the next scheduled sale, occurring at least ninety (90) days after such default.

(c) The taxing authorities of the county and of any political subdivision in the county may jointly petition the court of common pleas of the county to stay the sale of property in any political subdivision held under the provisions of this section. The petition shall set forth the reasons for such stay. If, in the opinion of the court, after hearing, there are sufficient reasons for such stay, the court shall have jurisdiction and power to enter an order staying such sale for any period not exceeding one year from the time fixed for such sale under subsection (a) of this section. In case of any such stay of sale, the properties in such political subdivision shall be sold in accordance with the provisions of this section on the date of the next annual sale.

(d) No individual whose landlord license has been revoked in a municipality pursuant to its ordinance may purchase property in the county in which the local municipality is located at a tax sale under this act. Every person bidding

for property to be sold at a tax sale under this act must certify that they are not bidding for or acting as an agent for a person who is barred from participating in a sale under this subsection. Pursuant to this subsection, a municipality shall furnish to the county in which such municipality is located, within forty-eight (48) hours in advance of a tax sale, documentation relating to landlord license revocations pursuant to municipal ordinance.

(e) Any municipality that issues landlords' licenses must provide to a landlord, prior to revoking such license, notice of the potential revocation. The landlord licensing ordinance must provide the landlord a reasonable opportunity to respond to the notice and an opportunity to appeal any decision made against him. If the landlord is in violation of a local ordinance that deals with building standards, safety or property maintenance, the municipality must also provide the landlord with a reasonable opportunity to comply with the ordinance prior to revocation. A revocation of a landlord's license shall not be permanent. The revocation shall only be until the landlord has corrected the code violations that led to the revocation. However, the landlord's license shall only be reinstated after the building has been inspected and approved by the appropriate official or employee of the licensing municipality. Inspections for reinstatement shall be performed within a reasonable amount of time after the landlord notifies the municipality of any corrected violation. The municipality shall, by ordinance, establish procedures to implement this subsection. Any municipality whose landlord licensing ordinance is contrary to this subsection must revise the ordinance within sixty (60) days of the effective date of this subsection. The notice, response and appeal provisions under this subsection as well as the prohibition on bidding under subsection (d) shall only apply to actions on or after the effective date of this subsection.

**§ 5860.602. Notice of sale.**

(a) At least thirty (30) days prior to any scheduled sale the bureau shall give notice thereof, not less than once in two (2) newspapers of general circulation in the county, if so many are published therein, and once in the legal journal, if any, designated by the court for the publication of legal notices. Such notice shall set forth (1) the purposes of such sale, (2) the time of such sale, (3) the place of such sale, (4) the terms of the sale including the approximate upset price, (5) the descriptions of the properties to be sold as stated in the claims entered and the name of the owner.

(b) Where the owner is unknown and has been unknown for a period of not less than five years, the name of the owner need not be included in such description.

(c) The description may be given intelligible abbreviations.

(d) Such published notice shall be addressed to the "owners of properties described in this notice and to all persons having liens, judgments or municipal or other claims against such properties."

(e) In addition to such publications, similar notice of the sale shall also be given by the bureau as follows:

1. At least thirty (30) days before the date of the sale, by United States certified mail, restricted delivery, return receipt requested, postage prepaid, to each owner as defined by this act.

2. If return receipt is not received from each owner pursuant to the provisions of clause (1), then, at least ten (10) days before the date of the sale, similar notice of the sale shall be given to each owner who failed to acknowledge the first notice by United States first class mail, proof of mailing, at his last known post office address by virtue of the knowledge and information possessed by the bureau, by the tax collector for the taxing district

making the return and by the county office responsible for assessments and revisions of taxes. It shall be the duty of the bureau to determine the last post office address known to said collector and county assessment office.

3. Each property scheduled for sale shall be posted at least ten (10) days prior to the sale.

(f) The published notice, the mail notice and the posted notice shall each state that the sale of any property may, at the option of the bureau, be stayed if the owner thereof or any lien creditor of the owner on or before the actual sale enters into an agreement with the bureau to pay the taxes in instalments [*sic*], in the manner provided by this act.

(g) All notices required by this section other than the newspaper notice and notice in the legal journal shall contain the following provision which shall be conspicuously placed upon said notices and set in at least 10-point type in a box as follows:

WARNING

"YOUR PROPERTY IS ABOUT TO BE SOLD WITHOUT YOUR CONSENT FOR DELINQUENT TAXES. YOUR PROPERTY MAY BE SOLD FOR A SMALL FRACTION OF ITS FAIR MARKET VALUE. IF YOU HAVE ANY QUESTIONS AS TO WHAT YOU MUST DO IN ORDER TO SAVE YOUR PROPERTY, PLEASE CALL YOUR ATTORNEY, THE TAX CLAIM BUREAU AT THE FOLLOWING TELEPHONE NUMBER _____, OR THE COUNTY LAWYER REFERRAL SERVICE."

(h) In case the property of any corporation, limited partnership or joint-stock association is advertised for sale, the bureau shall give to the Department of Revenue, at least thirty (30) days prior to the date of the scheduled sale, notice of the sale by certified mail on a form provided by the Department of Revenue which shall set forth (1) the name and address of the bureau, (2) the date of the

sale, (3) the name and address of each corporation, limited partnership or joint-stock association, if any, whose property is scheduled for sale and (4) the total number of corporations, limited partnerships and joint-stock associations whose properties are scheduled for sale. Upon receipt of the notice and at least seven (7) days before the date of sale listed on the notice, the Department of Revenue shall mail to the bureau, by certified mail, a proof of claim for payment of Commonwealth taxes which are accorded priority by section 1401 of the act of April 9, 1929 (P.L. 343, No. 176), known as "The Fiscal Code." The bureau shall include in the upset sale price of each said property the amount of Commonwealth taxes set forth the proof of claim received from the Department of Revenue. If the bureau complies with the notice of provisions of this section and the Department of Revenue fails to mail to the bureau, at least seven (7) days before the date of sale listed on said notice by verification by the postmark, by certified mail, the proof of claim required by this section, the lien upon said property shall be forever discharged and divested, notwithstanding any other provision of this act or other law to the contrary. If the bureau does not receive a reply from the Department of Revenue prior to the scheduled date of the sale, it shall be the duty of the bureau to contact the department to determine if such reply was mailed. The bureau may then opt to reschedule the sale if circumstances warrant. No owner shall attack the validity of any sale on the basis that the bureau failed to give the notice required by this section.

No sale shall be defeated and no title to property sold shall be invalidated because of proof that mail notice as herein required was not received by the owner, provided such notice was given as prescribed by this section.

(i) The costs of such advertisement and notices shall be added as part of the costs of such proceedings and shall be paid by the owner the same as other costs.

**§ 5860.603. Removal from sale; agreements to stay sale.**

Any owner or lien creditor of the owner may, at the option of the bureau, prior to the actual sale, (1) cause the property to be removed from the sale by payment in full of taxes which have become absolute and of all charges and interest due on these taxes to the time of payment, or (2) enter into an agreement, in writing, with the bureau to stay the sale of the property upon the payment of twenty-five per centum (25%) of the amount due on all tax claims and tax judgments filed or entered against such property and the interest and costs on the taxes returned to date, as provided by this act, and agreeing therein to pay the balance of said claims and judgments and the interest and costs thereon in not more than three (3) instalments [*sic*] all within one (1) year of the date of said agreement, the agreement to specify the dates on or before which each instalment [*sic*] shall be paid, and the amount of each instalment [*sic*]. So long as said agreement is being fully complied with by the taxpayer, the sale of the property covered by the agreement shall be stayed. But in case of default in such agreement by the owner or lien creditor, the bureau, after written notice of such default given by United States mail, postage prepaid, to the owner or lien creditor at the address stated in the agreement, shall apply all payments made against the oldest delinquent taxes and costs, then against the more recent. If sufficient payment has been made to discharge all the taxes and claims which would have caused the property to be put up for sale, the property may not be sold. If sufficient payment has not been received to discharge these taxes and claims, the bureau shall proceed with the sale of such property in the manner herein provided either at the next scheduled upset sale or at a special upset sale, either of which is to be held at least ninety (90) days after such default. If a party to an instalment [*sic*] agreement defaults on the agreement, the bureau shall not enter into a new instal-

ment [*sic*] agreement with that person within three (3) years of the default.

### § 5860.604. Sales of property of quasi-public corporation.

Where a claim becomes absolute and the property covered thereby is essential to the business of a quasi-public corporation, the bureau shall have the right of execution thereupon, as in cases of judgments, against such corporations. Upon the distribution of any fund realized by a sale of the franchises and the whole or any part of the property and assets of the corporation, the court shall determine the actual value of the property bound by the tax claim and the claim shall be preferred with other like claims to the extent of the value of the property thus determined.

### § 5860.605. Upset sale price.

The bureau shall fix as the upset price to be realized at the sale of any property upon a claim absolute, the sum of (a) the tax liens of the Commonwealth, (b) the amount of the claim absolute and interest thereon on which the sale is being held, (c) the amount of any other tax claim or tax judgment due on such property and interest on the judgment to the date of sale, (d) the amount of all accrued taxes including taxes levied for the current year, whether or not returned, a record of which shall be furnished to the bureau by tax collectors, receivers of taxes and taxing districts, (e) the amount of the municipal claims against the property, and (f) the record costs and costs of sale, including pro rata costs of the publication of notice and costs of mail and posted notices in connection with the return of the claim and mail and posted notices of sale.

It shall be the duty of all taxing districts, and municipal authorities having municipal claims against any such property, to certify, by August 30 of the year of the scheduled sale, the amount thereof to the bureau for the pur-

pose of including the same in the upset price. If a taxing district or municipal authority fails to certify the amount of any municipal claim which has become a claim against the property prior to August 1 of the year of the scheduled sale, the claim shall be divested by the upset sale, notwithstanding any provision of this act to the contrary.

No sale of property shall be made by the bureau unless a bid equal to the upset price is made. If no bid equal to the upset price is received, the sale shall be continued without further advertisement in order to give the bureau a chance to sell the property at private sale, or to petition court for an order to sell the same, freed and discharged of all liens as hereinafter provided. No upset sale may be continued beyond the end of the calendar year, and no property may be sold at private sale or judicial sale unless the property has first been exposed to upset sale and was not sold at upset sale.

### § 5860.606. Payments by purchasers at sales.

The purchaser of any property at an upset sale shall pay to the bureau the entire purchase money on the date of the sale, no later than one (1) hour before the close of business or at such other time on said date as designated by the bureau. In case said amount is not so paid, the sale shall be voided and the property shall be put up again at the same sale, if possible, or at any adjournment, readjournment or continuation of the sale.

### § 5860.607. Bureau's consolidated return to court; notice; confirmation; appeal.

(a) It shall be the duty of the bureau, not later than sixty (60) days after a sale was held, to make a consolidated return to the court of common pleas of the county, wherein it shall set forth, (1) a brief description of each property exposed to sale, (2) the name of the owner in whose name it was assessed, (3) the name of the owner at the time of

sale, and to whom notice by mail was given as provided by this act, (4) a reference to the record of the tax claim on which the sale was held, (5) the time when and the newspapers in which the advertisement for sale was made, with a copy of said advertisement, (6) the time of sale, (7) the name of the purchaser, if any, and (8) the price for which each property was sold, or that no bid was made equal to the upset price and the property was not sold. Within thirty (30) days of presentation of the consolidated return, if it shall appear to said court that such sale has been regularly conducted under the provisions of this act, the consolidated return and the sales so made shall be confirmed nisi. No consolidated return shall be made to the court until notice has been given to the owner under subsection (a.1)(1).

(a.1) (1) Notice shall be given by the bureau within thirty (30) days of the actual sale to each owner by United States certified mail, restricted delivery, return receipt requested, postage prepaid, to each owner at his last known post office address as determined in section 602(e)(2)[1] that the property was sold and that the owner may file objections or exceptions with the court relating to the regularity and procedures followed during the sale no later than thirty (30) days after the court has made a confirmation nisi of the consolidated return.

(2) All notices required by this subsection shall contain the following provisions and be in the following form set in at least 10-point type in a box as follows:

WARNING

"YOUR PROPERTY HAS BEEN SOLD AT A TAX SALE ON _____ FOR THE COLLECTION FOR DELINQUENT TAXES INCURRED IN _____.

YOU MAY FILE OBJECTIONS OR EXCEPTIONS TO THE SALE IMMEDIATELY BUT NO LATER THAN

---

[1] Section 5860.602(e)(2) of this title.

THIRTY (30) DAYS FOLLOWING THE CONFIRMATION NISI OF THE RETURN BY THE COURT.

IF YOU HAVE ANY QUESTIONS PLEASE CALL YOUR ATTORNEY, THIS TAX CLAIM BUREAU AT THE FOLLOWING TELEPHONE NUMBER _____, OR THE COUNTY LAWYER REFERRAL SERVICE."

(b) The bureau shall, at the expense of the county, within ten (10) days after confirmation nisi of the consolidated return, publish a general notice once in a newspaper of general circulation published in the county, and in the legal journal, if any, designated by rules of court for the publication of legal notices, stating (1) that the consolidated return of the bureau with respect to any such sale for taxes has been presented to the court, (2) giving the date of confirmation nisi and (3) that objections or exceptions thereto may be filed by any owner or lien creditor within thirty (30) days after the court has made a confirmation nisi of the consolidated return or that the return will be confirmed absolutely.

(b.1) If notice is given under subsection (a.1)(2), proof that notice under subsection (a.1)(1) was not received by the owner shall not defeat a sale nor invalidate title to property. If the mailed or published notice required under this section is defective or was served in an untimely manner, the court shall enter an order nunc pro tunc for cause and, upon proof of prejudice, shall grant the owner leave to file objections and exceptions.

(c) In case no objections or exceptions are filed to any such sale within thirty (30) days after the court has made a confirmation nisi, a decree of absolute confirmation shall be entered as of course by the prothonotary.

(d) Any objections or exceptions to such a sale may question the regularity or legality of the proceedings of the bureau in respect to such sale, but may not raise the legality of the taxes on which the sale was held, of the return by the tax collector to the bureau or of the claim entered. In

case any objections or exceptions are filed they shall be disposed of according to the practice of the court. If the same are overruled or set aside, a decree of absolute confirmation shall be entered by the court.

(e) If such objections or exceptions are sustained and the court deems the defect not amendable, it shall, by its order or decree, invalidate the sale and order another sale to be held in conformity with this act at such time and under such conditions as it shall fix.

(f) Repealed. 1971, June 3, P.L. 142, No. 6, § 1 (§ 509(a)(140)).

(g) If no objections or exceptions are filed or if objections or exceptions are finally overruled and the sale confirmed absolutely, the validity of the tax, its return for nonpayment, the entry of the claim, or the making of such claim absolute and the proceedings of the bureau with respect to such sale, shall not thereafter be inquired into judicially in equity or by civil proceedings by the person in whose name such property was sold, by a grantee or assignee, by any lien creditor or by any other person, except with respect to the giving of notice under the act, to the time of holding the sale, or to the time of petitioning the court for an order of sale. There shall be no period of redemption after such sale and the sale shall be deemed to pass a good and valid title to the purchaser, free from any liens or encumbrances whatsoever, except such liens as are hereafter specifically saved, and in all respects as valid and effective as if acquired by a sheriff's deed.

**§ 5860.607a. Additional notification efforts.**

(a) When any notification of a pending tax sale or a tax sale subject to court confirmation is required to be mailed to any owner, mortgagee, lienholder or other person or entity whose property interests are likely to be significantly affected by such tax sale, and such mailed notification is either returned without the required receipted per-

sonal signature of the addressee or under other circumstances raising a significant doubt as to the actual receipt of such notification by the named addressee or is not returned or acknowledged at all, then, before the tax sale can be conducted or confirmed, the bureau must exercise reasonable efforts to discover the whereabouts of such person or entity and notify him. The bureau's efforts shall include, but not necessarily be restricted to, a search of current telephone directories for the county and of the dockets and indices of the county tax assessment offices, recorder of deeds office and prothonotary's office, as well as contacts made to any apparent alternate address or telephone number which may have been written on or in the file pertinent to such property. When such reasonable efforts have been exhausted, regardless of whether or not the notification efforts have been successful, a notation shall be placed in the property file describing the efforts made and the results thereof, and the property may be rescheduled for sale or the sale may be confirmed as provided in this act.

(b) The notification efforts required by subsection (a) shall be in addition to any other notice requirements imposed by this act.

**§ 5860.608. Deed.**

After the court has confirmed the sale and the purchaser has paid the amount of his bid, it shall be the duty of the bureau to make to the said purchaser, his or their heirs or assigns a deed in fee simple for the property sold. Each such deed shall be in the name of the bureau as trustee grantor and shall be executed and duly acknowledged before the prothonotary by the director and a notation of such deed and acknowledgement shall be duly entered on the proper records. The deed shall, before delivery, be recorded in the office for the recording of deeds at the cost of the purchaser.

**§ 5860.609. Nondivestiture of liens.**

Every such sale shall convey title to the property under and subject to the lien of every recorded obligation, claim, lien, estate, mortgage, ground rent and Commonwealth tax lien not included in the upset price with which said property may have or shall become charged or for which it may become liable.

* * * * *

**Supreme Court of the United States**
**Office of the Clerk**
**Washington, DC 20543-0001**

WILLIAM K. SUTER
Clerk of the Court
(202) 479-3011

July 24, 2006

Mr. David C. Frederick
Kellogg, Huber, Hansen, Todd,
Evans & Figel, P.L.L.C.
1615 M Street, N.W.
Suite 400
Washington, DC 20036

Re: Neresh Nagpal, et al.
v. Northampton County Tax Claim Bureau, et al.
Application No. 06A83

Dear Mr. Frederick:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Souter, who on July 24, 2006 extended the time to and including August 31, 2006.

This letter has been sent to those designated on the attached notification list.

Sincerely,

**William K. Suter**, Clerk
by
/s/ RUTH JONES
Ruth Jones
Case Analyst

[attached notification list omitted]